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ON THE LAW OF THE SEA**

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Second Session

FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE FOURTH MEETING

Held at the Parque Central, Caracas,
on Monday, 15 July 1974, at 10.45 a.m.

Chairman:

Mr. ENGO

United Republic of Cameroon

Rapporteur:

Mr. MOTT

Australia

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STATEMENTS ON THE INTERNATIONAL REGIME AND MACHINERY (continued)

Mr. SUGIHARA (Japan) stated that the Committee had to find solutions to three essential questions: how to derive the greatest possible benefit from the common heritage in the interest of all mankind, how to ensure the equitable participation of all countries in those benefits, and how to carry out operational activities.

It followed from the notion of the common heritage that the resources of the sea-bed should be exploited in the most efficient and profitable manner possible. For that reason, the international organization which would be created should grant licences to contracting States which, in turn, would authorize physical or juridical persons, irrespective of their nationalities, to explore and exploit mineral resources in that part of the sea-bed area specified by the licences. Such a licensing system would make full use of the efficiency which characterized private entities and would be free of the disadvantages inherent in the bureaucracy that would develop if the exploitation were carried out directly or indirectly by the international organization. Moreover, in terms of the organization's budget, that system would be satisfactory. The choice of a system which granted the proposed enterprise exclusive exploitation rights would inevitably entail setting up a costly organization, which would make the programme less profitable and would not serve the best interests of the international community as a whole.

To derive the maximum benefit from the common heritage of mankind its resources must also be protected, since they could be exploited over a long period of time if that activity were carried out in a rational manner. For that purpose the international area could be subdivided into equal areas like the squares of a chessboard. Thus the areas which seemed to be most profitable would not be the only ones to be exploited.

All those measures would be of no avail if the benefits, financial or otherwise, derived from the exploitation of the sea-bed were to be monopolized by one State or a small number of States. The Japanese delegation agreed with the proposal that the revenues obtained from exploiting mineral resources should be equitably distributed among the developing countries, taking into account in particular the needs of land-locked and other geographically disadvantaged States. All States should participate in exploitation activities, for the technical and managerial competence thus acquired would be a great asset for the economic development of all interested States.

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(Mr. Sugihara, Japan)

The alternative of an enterprise having a monopoly on exploitation, run by experts from the developed countries, would not be conducive to that kind of situation. Individual States would be able to acquire the necessary competences only by engaging in exploitation activities either directly or in association with the technologically advanced States or companies from those States. Under a joint venture system, a State would be authorized to request only a limited number of licences over a specified period of time.

The Sea-Bed Committee had devoted itself to the working out of provisions relative to the régime applicable to the sea-bed beyond the limits of national jurisdiction, the powers and functions of the international organization and the composition of the respective organs. For those provisions to be put into effect, supplementary principles were needed relating, for example, to the areas to be exploited, the duration of the licences or contractual arrangement which would be entered into with the international organization, the phases of exploration and exploitation activities, and the kinds of payments to be made to the organization. Those questions remained essential no matter what system of exploitation was adopted. The Conference had to lay down at the least, the fundamental principles regarding the actual conduct of exploration and exploitation activities.

There still remained a number of problems to be solved, such as determining the limits of the international area, but the Committee should not perhaps proceed to an examination of that item until the Second Committee had reached a conclusion on the matter.

With regard to the variants and bracketed texts to be eliminated from the report of Sub-Committee I, some of them had been proposed for over-cautious tactical reasons and should be eliminated from the very start of the informal meetings; nevertheless, it would not be possible to deal with every case in the same way since a great many questions still required more precise definition.

Mr. STEFANO PISSANI (Cuba) stated that the adoption of legal rules relating to the international régime and machinery which, in the final analysis, depended on economic, political, social, scientific, technical and other factors, posed a number of problems.

One problem concerned the close link between economic and social progress and the goal to be pursued, namely, that the resources which would be obtained from the sea-bed

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would serve all mankind and, in particular, those nations that were still under-developed. The resources of the area would not, however, cure all ills of under-development. They might, on the contrary, provoke new ills if appropriate measures for the distribution of resources were not taken.

A second problem arose out of the fact that any consideration of the area had to take into account its increasing uses. The sea, which until recently had been used only for communications and fishing, now offered an immense variety of possibilities for exploitation of the sea-bed, with all its possible consequences. Exploitation of the sea-bed, however, did not conflict in any way with the legal régime of the superjacent waters. In that connexion, it was appropriate to emphasize the accelerated development of numerous aspects of international relations. Despite the principle of the freedom of the seas, an economic and maritime blockade had been imposed upon Cuba by a powerful neighbour, and it was easy to imagine the consequences of the adoption of international navigation restrictions by the imperialists.

The Cuban delegation, without attempting to examine all of the elements of the international régime which it would discuss in more specific terms on another occasion, wished to underline the following points which deserved priority treatment.

First, the principle according to which the area and its resources were the common heritage of mankind was inextricably bound up with the question of how and by whom the exploitation of those resources and other related activities in the zone should be carried out, and with the question of the adverse effects that such exploitation might have on the price of minerals coming essentially from developing countries.

The Cuban delegation began with the premise that the international authority should have the exclusive right to exploit the area either directly or through the intermediary of an enterprise, irrespective of the fact that there might be need during the initial stage for the assistance of developed countries. A licensing system would be incompatible with the notion of the common heritage since it would leave the area to the mercy of companies whose methods were only too well known.

As the head of the Cuban delegation had said in his general statement to the Conference, the principle of sovereignty was not sufficient to guarantee that the exploitation of resources in the economic zones of States would be carried out to the benefit of their respective peoples, since there were governments which, in exercise of their sovereignty, might concede the exploitation of mineral resources in their economic

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zone to multinational companies. The principal beneficiaries in such a case would be those companies themselves and not the peoples of the States involved. The same would hold true for the resources of the sea-bed if the multinational companies which were already pillaging the wealth and exploiting the labour of so many peoples were given access to those resources. The developing countries did not have the necessary technical and financial resources, but a rigorous system of control enforced by the international authority could allow States to make technical and financial contributions during the first stage until the authority itself would have the means to exploit the area directly. The initial contribution of the developing countries would be the resources themselves of the area.

Some companies with the necessary funds and technology already claimed, however, to have begun exploiting the resources of the area on the mere basis of a State's authorization. Until the legal rules relating to the area were defined and enforced, it should be clearly understood that no State or entity could exploit the resources of the area and that the moratorium provided for in General Assembly resolutions 2754 D (XXIV) and 2749 (XXV) should be observed, the régime applicable to the area in the meantime being the Declaration of Principles.

As regards the economic impact of exploiting the resources of the area it was certain that those resources were considerable, that exploitation of them would become increasingly feasible and economic and would have an impact on the raw materials market, and that it would be difficult to compensate developing countries which were producers of land-based minerals. It was apparent from document TD/B/449, prepared by UNCTAD, that the principal world producers and exporters of cobalt, including Cuba, would be seriously affected by the exploitation of the sea-bed and that by 1980 those countries would lose some 50 per cent of the gross export earnings on which they could have counted had there been no submarine exploitation. UNCTAD also indicated that compensation for the countries concerned would be ineffective, thereby justifying the adoption of preventive measures to control the production, marketing and selling-price of cobalt.

The Conference had been convened at a time when the natural resources of terra firma had begun to be depleted. Only recently had people become aware of the finite character of land resources, the depletion of which was due to multinational

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companies and the consumer societies to which they belonged and was carried out at the expense of the developing countries. Marine resources must be treated differently.

The second basic element he wished to stress was the absolute necessity of regarding the international area as a zone of peace, since it was not possible to conceive of a sea-bed régime over an area that was not exclusively reserved for peaceful purposes.

In the third place, international co-operation should be encouraged in the field of research, which must be linked to the development of skills of the nationals of developing countries from every point of view; the same applied to the transfer of technology, together with appropriate training activities, in the field of marine science and technology.

In the fourth place, a universal approach was indispensable for the protection of the marine environment. If the need for an international body of rules concerning pollution was agreed upon, such rules must not hamper the development of the economically backward countries. There was no need to state which countries were primarily responsible for pollution.

In the fifth place, with regard to differences of opinion in the matter of the settlement of any disputes that might arise in the area, the Working Group of the Sea-Bed Committee had completed a second reading of the relevant draft article, and it had been decided to reconsider the subject at a later stage. His delegation believed that the time was ripe to go ahead and to consider the establishment of an ad hoc tribunal, the competence of which must be defined in view of the complexity and multiplicity of the legal aspects of the international régime and machinery.

The régime was linked to the machinery that would ensure its observance. If it was agreed that there should be an international authority empowered to undertake, under its effective control, all activities relating to the exploration of the area and the exploitation of its resources, having regard to the economic and ecological impact of that exploitation, equal rights must be granted, to all States, without establishing special categories, on a basis of universality that was lacking at the Conference owing to the absence of representatives of the Provisional Revolutionary Government of the Republic of South Viet-Nam and of the Royal Government of National Union of Cambodia. The African, Palestinian and Puerto-Rican liberation movements should also be represented in the international authority, at least in an observer capacity.

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The authority should consist of an assembly with the ultimate power of decision, a representative council and a secretariat. One of the functions of the assembly would be to consider the establishment of any necessary subsidiary bodies.

The Committee was in the throes of establishing a largely new legal order, but it could neither ignore nor depart from the legitimate norms which marked positive achievements in the historical development of international law. They included the principles of self-determination, independence and sovereignty, all of which must be applied to the exploitation of the wealth of peoples in the interest of peoples. It should not be forgotten that the champions of imperialism were barely concealing their support for a so-called "new structure of international law", which was actually new only in the sense that they wished to consecrate, in a legal and ideological instrument, the acts of plunder in which imperialism was engaged and would continue to be engaged if allowed. Above all, however, as the Argentine delegation had said in the plenary body, the legal insecurity of multiple rules must be eschewed for fear of giving birth to an "ideology of plunder".

In conclusion he said that, since terra firma had experienced colonialism, plundering, pollution and war, the sea must be preserved and its peaceful utilization ensured.

Mr. ADENIJI (Nigeria) stressed the historical nature of the Declaration of Principles, according to which what belonged to all could not be seized by the few, but must be divided equitably among everyone. That concept of the common heritage was the cornerstone on which the edifice under construction rested, but it implied common responsibilities as well as common benefits. Nigeria would not be content with a few crumbs; it intended to take full part in administering the exploitation of the common heritage and the benefits derived therefrom.

According to the Declaration of Principles, the international area must be open to all States, whether coastal or land-locked, developed or developing. Yet the technology for exploiting the area was concentrated in the hands of a few States, and only those States would be able to undertake exploitation. Moreover, in the process of exploiting the area, those States might well create problems that could interfere with the subsequent use of the area by other States.

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In order to prevent that from happening, his delegation advocated the establishment of machinery vested with sufficient authority to ensure not only the exploration and exploitation of the common heritage but also the protection of the area against harmful activities. The authority should be vested with real power so that it could protect the interests of all States, many of which were not yet in a position to explore and exploit the common wealth. The régime should ensure that adequate benefits accrued to the international community from activities in the area.

His delegation found it difficult to reconcile the desire expressed by certain States for an effective, widely accepted régime over that part of the ocean which the coastal States could well take care of and the reluctance displayed by the same States with regard to an effective authority for the area of the sea-bed, which belonged to everyone. It was in everyone's interests that the régime to be established should take account not only of the realities of today but also of the possibilities of tomorrow. Only a strong régime, with powers of effective control, could meet that requirement.

As for the structure of the international machinery, his delegation was in favour of a democratic structure that would protect the interests of all. A consensus seemed to be emerging on the organs of the machinery. His delegation supported the creation of an assembly in which every member of the international community would be represented and have a vote. The assembly, which would control the finances of the machinery and approve its budget, would also elect members of the council. The council, with limited membership reflecting an equitable geographical distribution, would formulate policies along the lines of a board of directors of a corporation. He shared the view expressed at a previous meeting that the machinery should not be modelled on the machinery of the United Nations. In his opinion, the authority should be managed like a commercial enterprise, encouraging and compensating those who provided the necessary technology and providing the authority and all its members with maximum benefits. It was neither necessary nor desirable to give certain members of the council privileged positions; indeed, at a time when that situation in an important organ of the United Nations was being strongly criticized, his delegation could not be party to its perpetuation in a new international organ. It was unacceptable that one group of States should be more favoured than other groups, and his delegation would oppose any provision for the representation of special interests. Protection of investments, which was used as a

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pretext to justify preferential representation within an executive organ, could be provided in specific agreements between the machinery and the interested parties.

As for the operational organ, his delegation felt that the time had come to relinquish the two extreme proposals, the one envisaging exclusive exploitation of the resources by the authority, and the other advocating an authority that would merely license others to carry out exploitation. The first of those proposals would certainly delay effective exploitation for many years, while the second would divert the benefits of exploitation to a few. The only realistic approach to the problem would be to issue licences to competent States and organizations to exploit specified areas of the sea-bed beyond the limits of national jurisdiction. From the financial benefits derived from such licences and its share of the profits of the exploitation, the authority could accumulate enough funds to start exploitation and exploration on its own later.

With regard to the question of the economic consequences of the exploitation of the mineral resources of the sea-bed, he stressed that, in his opinion, the authority should be entitled to regulate production in the international area so that the stability of the income of mineral-producing developing countries would not be jeopardized.

Mr. KNOKE (Federal Republic of Germany) said that what was important now was not to discuss systems that had been proposed and positions that had already been taken, but to weigh the arguments in a spirit of constructive co-operation with a view to broadening the basis for a new consensus. He would therefore elaborate the general framework within which his delegation hoped that solutions could be found.

The régime and the authority would have the common function of ensuring the optimum utilization and most efficient management of the common heritage of mankind. The authority, as the Chairman had said, would have immense political significance for the future. Consequently, the very costly development of technology and the considerable investments required should not become an open-ended burden on the régime and the authority. The problem could best be solved by States and companies, and the authority should grant them, for limited periods and in limited areas, licences to explore and exploit the resources of the sea-bed and ocean floor.

It was in the interests of all that the future convention should ensure that the

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desire of those who wished to start deep-sea mining should not be checked by uncertainties over their legal position. In particular, the convention should contain provisions concerning the size of fields for exploration and exploitation purposes, non-discriminatory granting of exploration and exploitation rights, international protection of mining installations, the obligation to pay fees to the authority, and some provision to ensure that the operators would make minimum annual investments and exploit efficiently the mineral resources in their sector.

Those activities would create many situations which could not be regulated in detail in the convention. However, the question of competence for such matters must be thoroughly clarified. That was why he felt that an assembly was indispensable. An assembly would take major decisions of principle, in particular concerning the development and modification of the régime to take account of technological developments and experience gained. A council, on the other hand, would be responsible for all decisions other than those of principle, and would take the administrative decisions. It would also seem expedient to provide for technical expertise at a level below that of the council, each organ having a clearly defined mandate so that the whole machinery would operate smoothly.

He envisaged the assembly of the authority as having rules of procedure similar to those of the specialized agencies of the United Nations. The council's effectiveness would be determined largely by its composition and voting procedures. Its composition should be such as to ensure a balance between the interests of developing countries, industrialized countries, and geographically disadvantaged countries. Its rules of procedure should be drawn up in such a way as to ensure that the interests of special minorities were protected.

The great expanse of the ocean floor would no doubt give rise to conflicts of interests and divergences of opinion over the interpretation of the future convention; the special conditions governing the exploitation of mineral resources and the size of the investments involved would call for speedy settlements of disputes, and an organ would therefore be needed for interpreting the future convention and ascertaining legal positions. The question of whether any existing institution could serve that purpose or whether a new organ would have to be established had still to be considered, but there was in any case a manifest need for compulsory settlement of disputes.

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In order to promote world-wide participation in the riches of the sea-bed, it was necessary first of all to ensure direct and non-discriminatory access to those resources for all States and State-sponsored companies and, secondly, to ensure revenue sharing.

He was convinced that even in the initial phase participation of developing countries in the exploitation of the mineral resources was politically necessary and economically desirable and possible. For example, countries could issue permits for exploitation under which they would engage in joint ventures or enter into legal arrangements with third countries or companies. For countries which did not wish to participate in those activities forthwith, the authority could act in an advisory or intermediary capacity. It also seemed quite possible and economically feasible to set up in developing countries processing plants for sea-bed minerals.

Mr. GONZALEZ LAPEYRE (Uruguay) said that, bearing in mind the Chairman's recommendations concerning the length of statements, he would confine his remarks to four aspects which he considered important to the work of the Committee.

Firstly, it was necessary to bestow wide-ranging powers on the authority, because only in that way would it be capable of administering fairly the resources which had rightly been called the common heritage of mankind.

Secondly, it was important to state the aims and principles of the organization clearly and precisely in the relevant provisions. In other words, those provisions should define the aims and rules of procedure of the authority and of its members, taking account of the principle that those peoples and States should be favoured who were most affected by the present structure of the world economy.

Thirdly, it would be preferable not to enter into the rules and regulations in too much detail so that the machinery could subsequently adapt itself to evolution on technical, juridical and economic levels.

Fourthly, in order to attain the proposed objectives, the authority should be authorized to act as a business concern, not only in collaboration with States and in mixed companies, but directly.

The Uruguayan delegation felt that the draft submitted by his country and other Latin American countries (A/AC.138/49), when put in final form by the Committee, could serve as a useful basis for its work.

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Mr. CHAMBERLAIN (United Kingdom) stated that Sub-Committee I had clearly identified the issues to be considered and that its work should provide an excellent basis for negotiations.

In the view of his delegation the Committee would have to resolve three main questions. The first was whether the exploration and exploitation of the resources of the international area should be regulated by a licensing system or whether the authority itself should be responsible in which case it would take direct charge of those operations. The second question was the form that the structure of the authority should take. While there was general recognition of the need for an assembly on which all member States would be represented and for a council of limited composition, there were differing views as to the powers, functions and composition of those two organs and their relationship with each other. Thirdly, even if it were possible to achieve a draft of articles covering the international régime and authority, that would provide only a skeleton which it would be necessary to complete with detailed rules which, in the view of his delegation, should be drawn up at the same time as the substantive articles.

Obviously without those rules and regulations, it would not be possible for States to have a clear idea of the kind of authority with which they would be dealing. Even the large investments that would be required, they would be reluctant to assume commitments without knowing the precise terms and conditions under which the authority would operate. Another reason why his country attached importance to the elaboration of rules and regulations was that, as Dr. Pinto had stated with reference to the system of exploitation of the resources of the international area, there were certain similarities between the various systems that had been proposed. All systems envisaged that in the initial phase at least the work should be undertaken by those few entities which at the present time had the necessary technological capability and that there would be contracts, the terms of which had yet to be defined, between such entities and the authority.

His country fully supported General Assembly resolution 2749 (XXV) which stated that the sea-bed and ocean floor beyond the limits of national jurisdiction was the common heritage of mankind. Indeed there was general agreement on the substance of that resolution; differences of view existed concerning the best means of

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(Mr. Chamberlain, United Kingdom).

implementing it. While his delegation was prepared to adopt a flexible attitude it believed that three fundamental principles should be enshrined in the international régime. Firstly, that the régime should ensure that all countries, when they were ready to do so, should be able to participate in the exploitation of the area and enjoy the benefits deriving from it. Secondly, the régime should favour the developing countries in the distribution of revenue; that task might be entrusted to an organ of the authority in which those countries were in a majority. Finally, the régime should provide for representatives of developing countries to receive training in deep-sea mining technology.

His country would wish to avoid the establishment of an unwieldy and expensive international authority which might prove to be a financial burden to its Member States.

In 1971, the United Kingdom had tabled a detailed proposal for a licensing system. That proposal had not been supported and his delegation did not propose to press it at the present Conference; however, after giving careful consideration to the alternative possibilities, it had concluded that such a system still remained the best way of achieving the objectives he had outlined. He therefore proposed that in order to prevent the area and its resources from becoming the monopoly of a few highly developed nations, any licensing system should set a limit to the size of the area which any licensee State would be entitled to exploit at any one time.

With regard to the composition of the proposed assembly and council, his country was prepared to adopt a flexible attitude provided that the régime and machinery adopted were otherwise satisfactory.

Mr. RATTRAY (Jamaica) welcomed the representative of the United Republic of Cameroon as Chairman of the Committee, and said that his devotion to the work of Sub-Committee I of the Sea-Bed Committee had enabled him to draft a report which clearly identified the issues. Further, he expressed his deep gratitude to Mr. Pinto of Sri Lanka, who had devoted his energies to the cause of the common heritage, and would continue his efforts as Chairman of the unofficial meetings of the Committee.

The Committee's mandate rested on the Declaration of Principles, that is to say, the 10 commandments laid down in General Assembly resolution 2749 (XXV). He had recalled those fundamental principles in order to bring out the true nature of the

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(Mr. Rattray, Jamaica)

common heritage area, and of the régime and machinery essential to maintain its integrity. Once the fundamental postulates of the Declaration of Principles were accepted, the task of negotiating and formulating the necessary machinery fell into its true perspective. It was to be regretted that negotiations had frequently been conducted in the context of confrontation between developed and developing countries. In the present case, however, if they remained loyal to the commandments laid down in the Declaration, there could be no confrontation. The common heritage belonged to mankind as a whole and should be administered as such. The Conference should therefore decide, not who might exploit the common heritage, but how the heritage could be exploited for the benefit of mankind as a whole, with due regard to the interests and needs of the developing countries. For that reason some delegations had proposed that the resources of the area should be exploited directly by the commercial arm of the authority - the *Authority*. He hoped that negotiations would begin by abandoning such doctrinal concepts as "licensing", which were contrary to the concepts of the common heritage. What must first be done was to determine how mankind could derive benefits from the activities envisaged. Firstly, exploration and exploitation of the area which constituted the common heritage would demand the use of specific technology for protecting and harvesting the resources of the area. Secondly, relatively few developed countries had the necessary technology. Thirdly, relations would have to be established between the custodians of the common heritage and the proprietors of the technology. Fourthly, the relationship must respect the commandments established in the Declaration of Principles. The very fact that the need was recognized to establish that relationship showed that the fear of discrimination against developed countries was unfounded. Whether the authority were to involve itself directly or indirectly in exploration and development of the area, the technological needs remained the same. All that was required was to ensure that the technical capabilities were sought on a basis which was non-discriminatory. In establishing a relationship between the suppliers of technology and the proprietors of the common heritage, it should not be overlooked that the developed countries would derive considerable benefits from the activities envisaged to the extent that demand for their goods and services would increase.

The Declaration of Principles pointed the way to the establishment of strong international machinery with powers extensive enough to ensure that resources did not become the property of a few privileged countries, were not destroyed or damaged by

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indiscriminate exploitation, that the nationals of developing countries could acquire training in all aspects of marine technology, that the marine environment was protected and that production and marketing of products of the common heritage were regulated to ensure that the economy of the developing countries did not suffer, and finally to ensure an equitable sharing of benefits.

The Committee should study the problem of the type of control to be exercised at all stages of exploration, exploitation, production, distribution and the marketing of the resources. Control should be exercised at all stages to safeguard the interests mentioned in the Declaration, and especially to protect the economy of developing countries and ensure that all countries received their due share of the advantages derived from the exploitation of the common heritage. Whatever institutional framework was adopted, all those considerations would have to be taken into account and the common heritage would thus serve as a catalyst in the creation of a new order of international social justice.

As a representative of the country which had offered a home to the sea-bed authority, Jamaica was conscious of the fact that that organization should serve the interests of mankind, and he hoped that the authority would translate into reality the concepts of a common heritage.

The meeting rose at 12.20 p.m.